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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/878,908	06/19/1997	KARL-LUTZ LAUTERJUNG	09114/005001	8837

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EXAMINER

PREBILIC, PAUL B

ART UNIT PAPER NUMBER

3738

DATE MAILED: 03/12/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

08/878,908

Applicant(s)

LAUTERJUNG, KARL-LUTZ

Examiner

Paul B. Prebilio

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 September 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 21-25, 28, 32, 33, 36 and 63-65 is/are pending in the application.
- 4a) Of the above claim(s) 21-25 and 28 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 32, 33 and 36 is/are allowed.
- 6) ☒ Claim(s) 63-65 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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Reopening of Prosecution

Upon review of the Board of Appeals decision rendered September 13, 2002, it was determined that claims 63-65 were not allowable over newly found prior art even though the rejection thereon was reversed. Therefore, the prosecution of the present application has been reopened in order to address the patentability of claims 63-65 only. Claims 21-25 and 28 are withdrawn from consideration as being drawn to affirmed rejections, and claims 32, 33, and 36 have been allowed.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 62-65 are rejected under 35 U.S.C. 102(b) as being anticipated by Elliot et al (US 4,041,931). Elliot anticipates the claim language where the tubular graft as claimed is the vein (30) of Elliot, which has a free end joined to the aorta and a second unjoined free end (see Figure 4). The ring comprising overlapping windings of wire as claimed is met by split ring (12) with eyelet (22) respectively; see column 2, line 36 et seq.

With regard to claims 64 and 65, the minimum bending diameter would inherently be smaller as claimed if the eyelet (22) were stressed as shown in Applicant's Figure 2 because the eyelet (22) is the same structure as that claimed.

Claims 63-65 are rejected under 35 U.S.C. 102(b) as being anticipated by Lazarus (US 5,275,622). Lazarus anticipates the claim language where the tubular graft as claimed is the graft (121) of Lazarus (see Figures 10 and 11), the ring as claimed is spring means (131) of Lazarus, and the bundle of overlapping wires as claimed are any of the helical coil springs (136) of Lazarus; see column 8, lines 25-66.

With regard to claims 64 and 65, the minimum bending diameter as claimed is inherently present if the coil spring (136) is stressed as in Figure 2 of Applicant's disclosure because it is the same structure as claimed.

Claim 63 is rejected under 35 U.S.C. 102(b) as being anticipated by Hartenbach (US 3,833,940). Hartenbach anticipates the claim language where the ring as claimed is the flexible section or hose (8) of Hartenbach (see Figure 4), the tubular graft as claimed is the connecting piece (9) of Hartenbach and the bundle of overlapping windings as claimed are the longitudinally adjacent windings of Hartenbach which overlap each to the extent claimed; see column 2, line 55 to column 3, line 16 and Figures 3b and 4.

Conclusion

Applicant should specifically point out the support for any amendments made to the disclosure, including the claims (MPEP 714.02 and 2163.06). Due to the procedure outlined in MPEP 2163.06 for interpreting claims, it is noted that other art may be applicable under 35 USC 102 of 35 USC 103(a) once the aforementioned issue(s) is/are addressed.

Applicant is respectfully requested to provide a list of all copending applications that set forth similar subject matter to the present claims. A copy of such copending claims is respectfully requested in response to this Office action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul Prebilic whose telephone number is (703) 308-

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2905. The examiner can normally be reached on Monday-Thursday from 6:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott, can be reached on (703) 308-2111. The fax phone number for this Technology Center is (703) 872-9302.

Any inquiry of a general nature or relating to the status of this application should be directed to the Technology Center 3700 receptionist whose telephone number is (703) 308-0858.



Paul Prebilic
Primary Examiner
Art Unit 3738



JOHN E. KITTLE
DIRECTOR TC 3700